

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SYZAK,

Plaintiff,

v.

ANDREA LINDHOUT, et al.,

Defendants.

Case No. 1:16-cv-727

HON. JANET T. NEFF

/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving Plaintiff's Eighth Amendment claim. Defendants Aiken, Alfrey, Berg, Hammond, and Ritz moved for summary judgment on multiple grounds, including that Plaintiff failed to exhaust his administrative remedies (ECF No. 15). Defendant Lindhout also filed a Motion for Summary Judgment, arguing that Plaintiff failed to exhaust his administrative remedies (ECF No. 19). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that Defendants' motions both be granted (ECF No. 35). The matter is presently before the Court on Plaintiff's objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made. The Court denies the objection and issues this Opinion and Order.

Inasmuch as Plaintiff concedes that he did not file Step II or Step III grievance forms (Pl. Obj., ECF No. 36 at PageID.411), Plaintiff fails to demonstrate any error in the Magistrate Judge's

determination that Plaintiff has not exhausted his administrative remedies (R&R, ECF No. 35 at PageID.407). Plaintiff's objection merely reiterates the argument he made to the Magistrate Judge, to wit: that his subjective belief that "there were no remedies available to him" "should be considered a special circumstance that would excuse exhaustion" (Pl. Obj., ECF No. 36 at PageID.409). For the reasons stated in the Report and Recommendation (ECF No. 35 at PageID.406-407), Plaintiff's argument lacks merit. His subjective assessment of the availability of remedies is simply irrelevant to the exhaustion analysis. Therefore, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Accordingly:

IT IS HEREBY ORDERED that the Objection (ECF No. 36) is DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 35) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 15) is GRANTED.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment (ECF No. 19) is GRANTED.

Dated: September 19, 2017

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge